

Parent/Guardian Custodial Powers

Dakota County Law Library

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PRO SE DISCOVERY SERIES
Pamphlet 3

THIS IS A GUIDE PRODUCED BY THE DAKOTA COUNTY LAW LIBRARY FOR INDIVIDUALS DOING THEIR LEGAL WORK WITHOUT THE ASSISTANCE OF A LAWYER. IN LEGAL TERMINOLOGY, THESE INDIVIDUALS ARE ACTING PRO SE.

DEFINITION:

"PRO SE (PROH SAY OR SEE), ADV. & ADJ. [Latin] For oneself; on one's own behalf; without a lawyer"

from *Black's Law Dictionary*, Seventh Edition (1999)

This is a guide to mediation as an alternative for family legal conflicts.
It is not intended to provide legal advice.

Parental Delegation of Powers

The composition of the American family has seen many changes in the past years. Few families can be described as “traditional” with the stay-at-home mother and bread-winning father. Many couples live together without marrying, many children also live in single parent homes, and other children live in blended families. As a result of these changes in our society, the Minnesota legislature has enacted statutes that govern the delegation of parental or guardianship custodial powers to others. This guide does not cover custody/child support issues involved in marriage dissolution.

I. How is custody defined?

Legal Custody

Legal custody means the right to determine the child’s upbringing, including education, health care and religious training.

Joint Legal Custody

Joint legal custody means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child’s upbringing, including education, health care and religious upbringing.

Physical Custody and Residence

Physical custody and residence means the routine daily care and control and the residence of the child.

Joint Physical Custody

Joint physical custody means the routine daily care and control and the residence of the child are structured between the parties. It is a common error to define joint physical custody as dividing the daily care and control and the residence of the child on a 50/50 basis. There is no such requirement. All that is required is some structuring between the parties.

II. Short summary of the statutes, including some recent legislative changes in 2003

Delegation of powers by parent or guardian (Minnesota Statute 524.5-211)

A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding one year, any powers regarding care, custody or property of the minor or ward, except the power to consent to marriage or adoption of a minor ward.

A parent of a minor child may also delegate those powers by designating a standby or temporary custodian under Minnesota Statutes, Chapter 257B. Please refer to Minnesota Statute 524.5-211 for a complete explanation of the delegation of powers.

Guardian of a Minor (Minnesota Statutes 524.5-201 through 524.5-211)

A person becomes a guardian of a minor by parental appointment, by designation of a standby guardian pursuant to Chapter 257B, upon appointment of the court, or by delegation.

The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

Please refer to Minnesota Statutes 524.5-201 through 524.5-211 for a complete explanation of guardianship of a minor.

Standby Custodian, Temporary Custodian (Minnesota Statutes, Chapter 257B)

“Standby custodian” means a person named by a designator to assume the duties of the co-custodian or custodian of a child and whose authority becomes effective upon the incapacity, debilitation and consent, or death of the child’s parent.

“Temporary custodian” means a person named by a designator to assume the duties of legal and physical custodian of a child for a specific time up to 24 months.

“Triggering event” means a specified occurrence stated in the designation that empowers a standby or temporary custodian to assume the powers, duties and responsibilities of custodian or co-custodian.

Please refer to Minnesota Statutes, Chapter 257B for a complete explanation of standby custodian and temporary custodian.

Minnesota Statute 257B.04 provides a sample designation form.

De Facto Custodian, Interested Third Party (Minnesota Statutes, Chapter 257C)

“De facto custodian” means an individual who has been the primary caretaker for a child who has, within the 24 months immediately preceding the filing of the petition, resided with the individual without a parent present and with a lack of demonstrated consistent participation by a parent as defined in Minnesota Statute 257C.01, Subd. 2. The burden of proof factors for a de facto custodian are listed in Minnesota Statute 257C.01, Subd.6.

“Interested third party” means an individual who is not a de facto custodian but who can prove that at least one of the factors in Minnesota Statute 257C.03, Subd. 7 is met.

“Interested third party” does not include an individual who has a child placed in the individual’s care: (1) through a custody consent decree under Minnesota Statute 257C.07; (2) through a court order or voluntary placement under Minnesota Statutes, Chapter 260C; or (3) for adoption under Minnesota Statutes, Chapter 259.

Please refer to Minnesota Statutes, Chapter 257C for a complete explanation of de facto custodian and interested third party.

Custody Consent Decree (Minnesota Statutes, Chapter 257C)

In a proceeding under this chapter, a parent may transfer legal and physical custody of a child by a consent decree under this section. The court may approve a proposed consent decree if the custody arrangement is in the best interest of the child and all parties to the decree agree to it after being fully informed of its contents.

Please refer to Minnesota Statute 257C.07 for more complete information regarding the decree.

Rights of Visitation (Grandparents) (Minnesota Statutes, Chapter 257C)

Please refer to Minnesota Statute 257C.08 for more complete information regarding the rights of grandparents to visitation.

It is suggested that anyone seeking any of the above designations, decrees or orders contact an attorney to assist them in filing with the court.

III. Further Reading

- Best Interest of the Child in Court, Minnesota State Bar Association, Continuing Legal Education, 2002 (CLE #027-03)
- 23rd Annual Family Law Institute, Section 11, Minnesota State Bar Association, Continuing Legal Education, 2002 (CLE#125-02)
- Grandparents' Rights, 3d ed., 2001, by Traci Truly, Sphinx Publishing, ISBN 1-52748-139-0
- Child Custody: Building Parenting Agreements That Work, Nolo Press
- Minnesota Practice, Family Law, Volume 14, by Martin L. Swoden and Linda A. Olup, West Group (Chapter 6, Child Custody)

IV. Resources

*Chrysalis: A Center for Women – 612-871-0118
4432 Chicago Avenue South
Minneapolis, MN 55407

*Resource Center for Fathers and Families – 763-783-4038
Human Services Building – Suite 305
1201 89th Avenue North East
Blaine, MN 55434

*Dakota County Bar Referral – 952-431-3200
15025 Glazier Avenue – Suite 201
Apple Valley, MN 55124